

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>GENE NEVILS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 3:12-cv-01086</b>
<b>v.</b>	)	
	)	<b>Judge Sharp</b>
<b>AL NATIONS, et al.,</b>	)	<b>Magistrate Judge Knowles</b>
	)	
<b>Defendants.</b>	)	

**ORDER**

Pending before the Court is a Report and Recommendation (“R & R”) of the Magistrate Judge, recommending that *Defendants Darren Barnes, Sergio Guerra, and Keith Martin’s Motion for Summary Judgment* (Docket Entry No. 43) be granted. The R & R provides, in part,

Defendants filed the instant Motion on September 27, 2013. Docket No. 43. Plaintiff has failed to timely respond to Defendants’ Motion.

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Plaintiff has also failed to timely respond to Defendants’ Statement of Undisputed Facts. Pursuant to Local Rule 56.01(g), Plaintiff’s failure to respond indicates “that the asserted facts are not disputed for the purposes of summary judgment.” Accordingly, there are no genuine issues as to any material fact and all that remains to be determined is whether Defendants are entitled to a judgment as a matter of law.

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For the reasons discussed [], there are no genuine issues of material fact and Defendants are entitled to a judgment as a matter of law.

Therefore, the Magistrate Judge recommended that “Defendants’ Motion for Summary Judgment (Docket No. 43) be GRANTED.” (Docket Entry No. 50 at 7 and 10). No objections were made directly to the R & R.<sup>1</sup>

Having thoroughly reviewed the record in this case and the applicable law in accordance with Rule 72(b), the Court will accept the R & R.

Accordingly, the Court hereby rules as follows:

(1) The Report and Recommendation (Docket Entry No. 50) is hereby ACCEPTED and APPROVED;

(2) *Defendants Darren Barnes, Sergio Guerra, and Keith Martin’s Motion for Summary Judgment* (Docket Entry No. 43) is hereby GRANTED;

(3) Plaintiff’s Motion for Summary Judgment (Docket Entry No. 58) is hereby DENIED as untimely;

(4) All other pending motions are hereby TERMINATED as moot; and

(5) This case is hereby DISMISSED WITH PREJUDICE.

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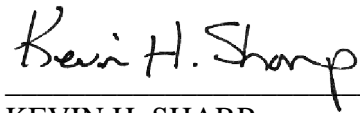
<sup>1</sup> Plaintiff did, however, file a motion for summary judgment within fourteen (14) days of its entry. The first paragraph reads, in part:

Pending before this Court is a Motion for Summary Judgment filed by the Defendants in this action. In this Plaintiff’s motion, the Plaintiff will assert to this Court that, he never received and therefore could not respond to the Defendants Motion or Statement of Undisputed Facts. Nor does the Plaintiff have any knowledge or understanding of any instant motion, or supporting materials.

(Docket Entry No. 58 at 1). Pursuant to the *Scheduling Order* entered on February 22, 2013, all dispositive motions were to be filed by September 27, 2013. Therefore, the Court will not consider the motion because it is untimely. Further, the Court has reviewed the record in the case and concludes Defendants properly delivered the motion in accordance with Local Rule 5.01, and it was accepted, on Plaintiff’s behalf, by “Spencer” at the Williamson County Jail. *See* (Docket Entry No. 67-1). Furthermore, in at least eight (8) separate instances, the record reflects that the same person signed for Plaintiff’s mail. *See* (Docket Entry Nos. 5, 11, 33, 38, 54, 57, 68 and 84). Lastly, if Plaintiff’s filing was intended to be an objection to the R & R, it is hereby overruled.

The Clerk is directed to enter Judgment in a separate document in accordance with Federal Rule of Civil Procedure 58.

**It is SO ORDERED.**

A handwritten signature in black ink that reads "Kevin H. Sharp". The signature is written in a cursive, flowing style. The first name "Kevin" is written with a large 'K' and a small 'v'. The middle initial "H." is written with a large 'H' and a period. The last name "Sharp" is written with a large 'S' and a small 'p'.

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KEVIN H. SHARP  
UNITED STATES DISTRICT JUDGE